

AMENDED IN ASSEMBLY AUGUST 9, 2004

AMENDED IN SENATE APRIL 27, 2004

SENATE BILL

No. 1484

Introduced by Senator Ackerman

(Coauthors: Senators Aanestad, Battin, Denham, Margett, and Oller)

(Coauthors: Assembly Members Bogh, Cogdill, Cox, Daucher, Dutra, Garcia, Maddox, Mountjoy, Pacheco, Samuelian, and Spitzer)

February 19, 2004

An act to amend Sections 647 and 647.7 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 1484, as amended, Ackerman. Disorderly conduct.

Existing law makes it a misdemeanor for anyone to look through a hole or opening or to view, by means of any instrumentality, into the interior of any of specified rooms or any other interior place where the occupant has a reasonable expectation of privacy, with the intent to invade that privacy.

This bill would add bedrooms to the enumerated rooms to which this prohibition is applicable.

Existing law also makes it a misdemeanor for a person to secretly videotape, film, photograph, or record by electronic means, another, identifiable person under or through his or her clothing, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of that person and invade the privacy of that other person, under circumstances

in which that other person has a reasonable expectation of privacy. Existing law provides that this and the above-described offense can be punished by imprisonment in a county jail not exceeding ~~six~~ 6 months, by a fine not exceeding \$1,000, or by both that fine and imprisonment, but authorizes a longer jail term of one year if the offense is committed after one or more prior convictions for these offenses or for the offense of peeking into an inhabited structure while loitering, wandering, or prowling upon private property.

This bill would make it a misdemeanor to use a concealed camcorder, motion picture camera, or photographic camera of any type, to secretly videotape, film, photograph, or record by electronic means, another, identifiable person who may be in a state of full or partial undress, for the purpose of viewing the body of, or the undergarments worn by, that other person, without the consent or knowledge of that other person, in the interior of a bedroom, bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which that other person has a reasonable expectation of privacy, with the intent to invade the privacy of that other person. This new offense would be punished exactly as are the above-described offenses, except that the maximum fine would be \$5,000 if the offense is committed after one or more prior convictions for the same offense, or for an offense referenced above.

By creating a new crime, this bill would impose a state-mandated local program.

This bill would incorporate changes in Section 647.7 of the Penal Code, proposed by AB 2403, to be operative only if AB 2403 and this bill are both chaptered and become effective January 1, 2005 and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



The people of the State of California do enact as follows:

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating

1 liquor, any drug, controlled substance, toluene, or any
2 combination of any intoxicating liquor, drug, or toluene, interferes
3 with or obstructs or prevents the free use of any street, sidewalk,
4 or other public way.

5 (g) When a person has violated subdivision (f), a peace officer,
6 if he or she is reasonably able to do so, shall place the person, or
7 cause him or her to be placed, in civil protective custody. The
8 person shall be taken to a facility, designated pursuant to Section
9 5170 of the Welfare and Institutions Code, for the 72-hour
10 treatment and evaluation of inebriates. A peace officer may place
11 a person in civil protective custody with that kind and degree of
12 force which would be lawful were he or she effecting an arrest for
13 a misdemeanor without a warrant. No person who has been placed
14 in civil protective custody shall thereafter be subject to any
15 criminal prosecution or juvenile court proceeding based on the
16 facts giving rise to this placement. This subdivision shall not apply
17 to the following persons:

18 (1) Any person who is under the influence of any drug, or under
19 the combined influence of intoxicating liquor and any drug.

20 (2) Any person who a peace officer has probable cause to
21 believe has committed any felony, or who has committed any
22 misdemeanor in addition to subdivision (f).

23 (3) Any person who a peace officer in good faith believes will
24 attempt escape or will be unreasonably difficult for medical
25 personnel to control.

26 (h) Who loiters, prowls, or wanders upon the private property
27 of another, at any time, without visible or lawful business with the
28 owner or occupant. As used in this subdivision, “loiter” means to
29 delay or linger without a lawful purpose for being on the property
30 and for the purpose of committing a crime as opportunity may be
31 discovered.

32 (i) Who, while loitering, prowling, or wandering upon the
33 private property of another, at any time, peeks in the door or
34 window of any inhabited building or structure, without visible or
35 lawful business with the owner or occupant.

36 (j) Who lodges in any building, structure, vehicle, or place,
37 whether public or private, without the permission of the owner or
38 person entitled to the possession or in control of it.

39 (k) (1) Any person who looks through a hole or opening, into,
40 or otherwise views, by means of any instrumentality, including,

1 but not limited to, a periscope, telescope, binoculars, camera,
2 motion picture camera, or camcorder, the interior of a bedroom,
3 bathroom, changing room, fitting room, dressing room, or tanning
4 booth, or the interior of any other area in which the occupant has
5 a reasonable expectation of privacy, with the intent to invade the
6 privacy of a person or persons inside. This subdivision shall not
7 apply to those areas of a private business used to count currency
8 or other negotiable instruments.

9 (2) Any person who uses a concealed camcorder, motion
10 picture camera, or photographic camera of any type, to secretly
11 videotape, film, photograph, or record by electronic means,
12 another, identifiable person under or through the clothing being
13 worn by that other person, for the purpose of viewing the body of,
14 or the undergarments worn by, that other person, without the
15 consent or knowledge of that other person, with the intent to
16 arouse, appeal to, or gratify the lust, passions, or sexual desires of
17 that person and invade the privacy of that other person, under
18 circumstances in which the other person has a reasonable
19 expectation of privacy.

20 (3) (A) Any person who uses a concealed camcorder, motion
21 picture camera, or photographic camera of any type, to secretly
22 videotape, film, photograph, or record by electronic means,
23 another, identifiable person who may be in a state of full or partial
24 undress, for the purpose of viewing the body of, or the
25 undergarments worn by, that other person, without the consent or
26 knowledge of that other person, in the interior of a bedroom,
27 bathroom, changing room, fitting room, dressing room, or tanning
28 booth, or the interior of any other area in which that other person
29 has a reasonable expectation of privacy, with the intent to invade
30 the privacy of that other person.

31 (B) Neither of the following is a defense to the crime specified
32 in this paragraph:

33 (i) The defendant was a cohabitant, landlord, tenant, cotenant,
34 employer, employee, or business partner or associate of the victim,
35 or an agent of any of these.

36 (ii) The victim was not in a state of full or partial undress.

37 (l) In any accusatory pleading charging a violation of
38 subdivision (b), if the defendant has been once previously
39 convicted of a violation of that subdivision, the previous
40 conviction shall be charged in the accusatory pleading. If the

1 previous conviction is found to be true by the jury, upon a jury trial,
2 or by the court, upon a court trial, or is admitted by the defendant,
3 the defendant shall be imprisoned in a county jail for a period of
4 not less than 45 days and shall not be eligible for release upon
5 completion of sentence, on probation, on parole, on work furlough
6 or work release, or on any other basis until he or she has served a
7 period of not less than 45 days in a county jail. In all cases in which
8 probation is granted, the court shall require as a condition thereof
9 that the person be confined in a county jail for at least 45 days. In
10 no event does the court have the power to absolve a person who
11 violates this subdivision from the obligation of spending at least
12 45 days in confinement in a county jail.

13 In any accusatory pleading charging a violation of subdivision
14 (b), if the defendant has been previously convicted two or more
15 times of a violation of that subdivision, each of these previous
16 convictions shall be charged in the accusatory pleading. If two or
17 more of these previous convictions are found to be true by the jury,
18 upon a jury trial, or by the court, upon a court trial, or are admitted
19 by the defendant, the defendant shall be imprisoned in a county jail
20 for a period of not less than 90 days and shall not be eligible for
21 release upon completion of sentence, on probation, on parole, on
22 work furlough or work release, or on any other basis until he or she
23 has served a period of not less than 90 days in a county jail. In all
24 cases in which probation is granted, the court shall require as a
25 condition thereof that the person be confined in a county jail for
26 at least 90 days. In no event does the court have the power to
27 absolve a person who violates this subdivision from the obligation
28 of spending at least 90 days in confinement in a county jail.

29 In addition to any punishment prescribed by this section, a court
30 may suspend, for not more than 30 days, the privilege of the person
31 to operate a motor vehicle pursuant to Section 13201.5 of the
32 Vehicle Code for any violation of subdivision (b) that was
33 committed within 1,000 feet of a private residence and with the use
34 of a vehicle. In lieu of the suspension, the court may order a
35 person's privilege to operate a motor vehicle restricted, for not
36 more than six months, to necessary travel to and from the person's
37 place of employment or education. If driving a motor vehicle is
38 necessary to perform the duties of the person's employment, the
39 court may also allow the person to drive in that person's scope of
40 employment.



1 SEC. 2. Section 647.7 of the Penal Code is amended to read:

2 647.7. (a) In any case in which a person is convicted of
3 violating subdivision (i) or (k) of Section 647, the court may
4 require counseling as a condition of probation. Any defendant so
5 ordered to be placed in a counseling program shall be responsible
6 for paying the expense of his or her participation in the counseling
7 program as determined by the court. The court shall take into
8 consideration the ability of the defendant to pay, and no defendant
9 shall be denied probation because of his or her inability to pay.

10 (b) Every person who, having been convicted of violating
11 subdivision (i) or (k) of Section 647, commits a second or
12 subsequent violation of subdivision (i) or (k) of Section 647, shall
13 be punished by imprisonment in a county jail not exceeding one
14 year, by a fine not exceeding one thousand dollars (\$1,000), or by
15 both that fine and imprisonment, except as provided in subdivision
16 (c).

17 (c) Every person who, having been previously convicted of
18 violating subdivision (i) or (k) of Section 647, commits a violation
19 of paragraph (3) of subdivision (k) of Section 647 regardless of
20 whether it is a first, second, or subsequent violation of that
21 paragraph, shall be punished by imprisonment in a county jail not
22 exceeding one year, by a fine not exceeding five thousand dollars
23 (\$5,000), or by both that fine and imprisonment.

24 SEC. 2.5. *Section 647.7 of the Penal Code is amended to read:*

25 647.7. (a) In any case in which a person is convicted of
26 violating subdivision (i) or (k) of Section 647 *or Section 647.05*,
27 the court may require counseling as a condition of probation. Any
28 defendant so ordered to be placed in a counseling program shall be
29 responsible for paying the expense of his or her participation in the
30 counseling program as determined by the court. The court shall
31 take into consideration the ability of the defendant to pay, and no
32 defendant shall be denied probation because of his or her inability
33 to pay.

34 (b) Every person who, having been convicted of violating
35 subdivision (i) or (k) of Section 647, commits a second or
36 subsequent violation of subdivision (i) or (k) of Section 647, shall
37 be punished by imprisonment in a county jail not exceeding one
38 year, by a fine not exceeding one thousand dollars (\$1,000), *or by*
39 *both that fine and imprisonment, except as provided in subdivision*
40 *(c).*

1 (c) Every person who, having been previously convicted of
2 violating subdivision (i) or (k) of Section 647, commits a violation
3 of paragraph (3) of subdivision (k) of Section 647 regardless of
4 whether it is a first, second, or subsequent violation of that
5 paragraph, shall be punished by imprisonment in a county jail not
6 exceeding one year, by a fine not exceeding five thousand dollars
7 (\$5,000), or by both that fine and imprisonment.

8 SEC. 3. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

17 SEC. 4. Section 2.5 of this bill incorporates amendments to
18 Section 647.7 of the Penal Code proposed by both this bill and AB
19 2403. It shall only become operative if (1) both bills are enacted
20 and become effective on or before January 1, 2005, (2) each bill
21 amends Section 647.7 of the Penal Code, and (3) this bill is
22 enacted after AB 2403, in which case Section 2 of this bill shall not
23 become operative.

